

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

1020.P12451

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on December 13, 2007Signature /Spencer A Bartl/Typed or printed name Spencer A Bartl

Application Number

09/981,389

Filed

10/17/2001

First Named Inventor

David Graumann

Art Unit

2615

Examiner

Devona E. Faulk

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

/John F Kacvinsky, Reg # 40,040/

Signature

☐

assignee of record of the entire interest.

John F KacvinskySee 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

Typed or printed name

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attorney or agent of record.

Registration number 40,040724-933-9338

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

December 13, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.

Submit multiple forms if more than one signature is required, see below.

☒*Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	David Graumann	Examiner:	Devona E. Faulk
Serial No.:	09/981,389	Group Art Unit:	2615
Filed:	October 17, 2001	Docket No.:	1020.P12451
Title:	ACOUSTIC SOURCE LOCALIZATION BY PHASE SIGNATURE		

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicants have carefully reviewed and considered the Final Office Action mailed on September 13, 2007 and the cited references. In response to the Final Office Action, Applicants respectfully request review prior to the filing of an Appeal Brief.

35 U.S.C. §103 Rejection of the Claims

Claims 1, 3-5, 7, 9-10, 12, 13, 15, 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Matsuo (U.S. Patent No. 6,600,824) in view of Birchfield et al. (U.S. Pub. No. 2002/0097885) in further view of Weinberger (U.S. Patent No. 1,897,222).

Claims 6, 11 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Matsuo (U.S. Patent No. 6,600,824) and Birchfield et al (U.S. Pub. No. 2002/0097885) and Weinberger (U.S. Patent No. 1,897,222) in view of Nordstrom et al. (U.S. Patent No. 5,058,419).

Applicants respectfully traverse these rejections.

REMARKS

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable

expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations.

Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claim 1. Therefore claim 1 defines over Matsuo in view of Birchfield et al. in further view of Weinberger whether taken alone or in combination. For example, claim 1 recites the following language, in relevant part:

multiple reflectors having acoustically reflective surfaces of an irregular shape that provide additional phase variation, resulting in improved spatial distinction during analysis, said reflectors structured and arranged to reflect the acoustic waves in a direction of the first microphone and the second microphone....

As correctly noted in the Office Action, reflecting the acoustic waves in a direction of the first microphone and the second microphone is not disclosed by Matsuo as modified by Birchfield (Page 4, Paragraph 2). According to the Office Action, the missing language is disclosed by Weinberger at Figure 1. Applicant respectfully disagrees.

Weinberger fails to disclose the missing language of claim 1. For example, Weinberger at the given cite, shows only a single reflector. By way of contrast, claim 1 recites multiple reflectors. Furthermore, Weinberger discloses only a single reflector that is geometrically or regularly shaped. (Page 2, lines 18-29). The claimed subject matter, however, comprises multiple reflectors of an irregular shape that provide additional phase variation, resulting in improved spatial distinction during analysis. Applicant respectfully submits that the geometrically or regularly shaped reflector as disclosed by Weinberger arguably fails to provide additional phase variation as disclosed by the claimed subject matter. It follows that Weinberger also fails to disclose the additional phase variation and analysis of the reflected sound waves. Applicant respectfully submits that there is no suggestion or motivation present within the cited

references that would suggest to modify the teaching of Weinberger to include “multiple reflectors having acoustically reflective surfaces of an irregular shape that provide additional phase variation, resulting in improved spatial distinction during analysis.” Consequently, Weinberger fails to disclose, teach or suggest the missing language. Accordingly, Matsuo in view of Birchfield et al. in further view of Weinberger, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Furthermore, the cited references fail to disclose, teach or suggest “acoustically reflective surfaces of an irregular shape that provide additional phase variation” as recited in claim 1. At page 3 of the Office Action, the Examiner implies that the presence of humans is implicit within the teachings of Matsuo. The Examiner further reasons that humans may be present and human ears read upon “acoustically reflective surfaces of an irregular shape that provide additional phase variation.” Applicant respectfully disagrees. Applicant respectfully submits that the cited references fail to explicitly disclose the presence of human ears. Moreover, even if human ears were disclosed by the references, there is absolutely no indication within any of the cited references, whether taken alone or in combination, that could reasonably suggest that the ears of humans may be used as “acoustically reflective surfaces of an irregular shape that provide additional phase variation.” Applicant respectfully submits that human ears are not acoustically reflective. The purpose of the human ear is to absorb sound and direct sound waves into the inner ear so that the sound waves may be processed by the inner ear and the brain. By way of contrast, an acoustically reflective surface, as disclosed by the claimed subject matter, reflects sound waves. Accordingly, Matsuo in view of Birchfield et al. in further view of Weinberger, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Claims 7 and 12 recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 7 and 12 are patentable and non-obvious over Matsuo in view of

Birchfield et al. in further view of Weinberger for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 1, 7, and 12.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, removal of the obviousness rejection with respect to claims 1, 7, and 12 is respectfully requested. Claims 3-6, 9-11, 13, 15-16, and 18 also are non-obvious and patentable over Matsuo in view of Birchfield et al. in further view of Weinberger, taken alone or in combination, at least on the basis of their dependency from claims 1, 7, and 12. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

Claims 3-5, 9-10, 13, 15-16 also are patentable and non-obvious over Matsuo in view of Birchfield et al. in further view of Weinberger, whether taken alone or in combination, because a rejection based on obviousness under 35 U.S.C. § 103(a) is improper without a motivation to combine the cited references. *See* MPEP § 2142, for example. In the present case, the Office has failed to meet its initial burden to provide some suggestion or motivation that it is desirable to do what the Applicant has done. The Office also has failed to support its conclusion of obviousness by failing to present a convincing line of reasoning as to why a person of ordinary skill in the art would have found the claimed invention to have been obvious in view of the teachings of the cited references. Rather, the Office merely concludes that it would have been obvious to make the alleged combination without providing any reasoning at all as to why the alleged combination would have been desirable to a person of ordinary skill in the art. Without the benefit of the Office's reasoning as to the motivation to combine the cited references, Applicant is unable to analyze the merits of the Office's reasoning.

For at least the above reasons, Applicant submits that claims 1, 3-7, 9-13, 15-16, and 18 recite novel features not shown by the cited references. Further, Applicant submits that the

above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1, 3-7, 9-13, 15-16, and 18 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC



John F. Kacvinsky, Reg. No. 40,040
Under 37 CFR 1.34(a)

Dated: December 13, 2007

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